Supreme Court of the United States

OCTOBER TERM, 1953

No. 188

UNITED CONSTRUCTION WORKERS, affiliated with the UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

LABURNUM CONSTRUCTION CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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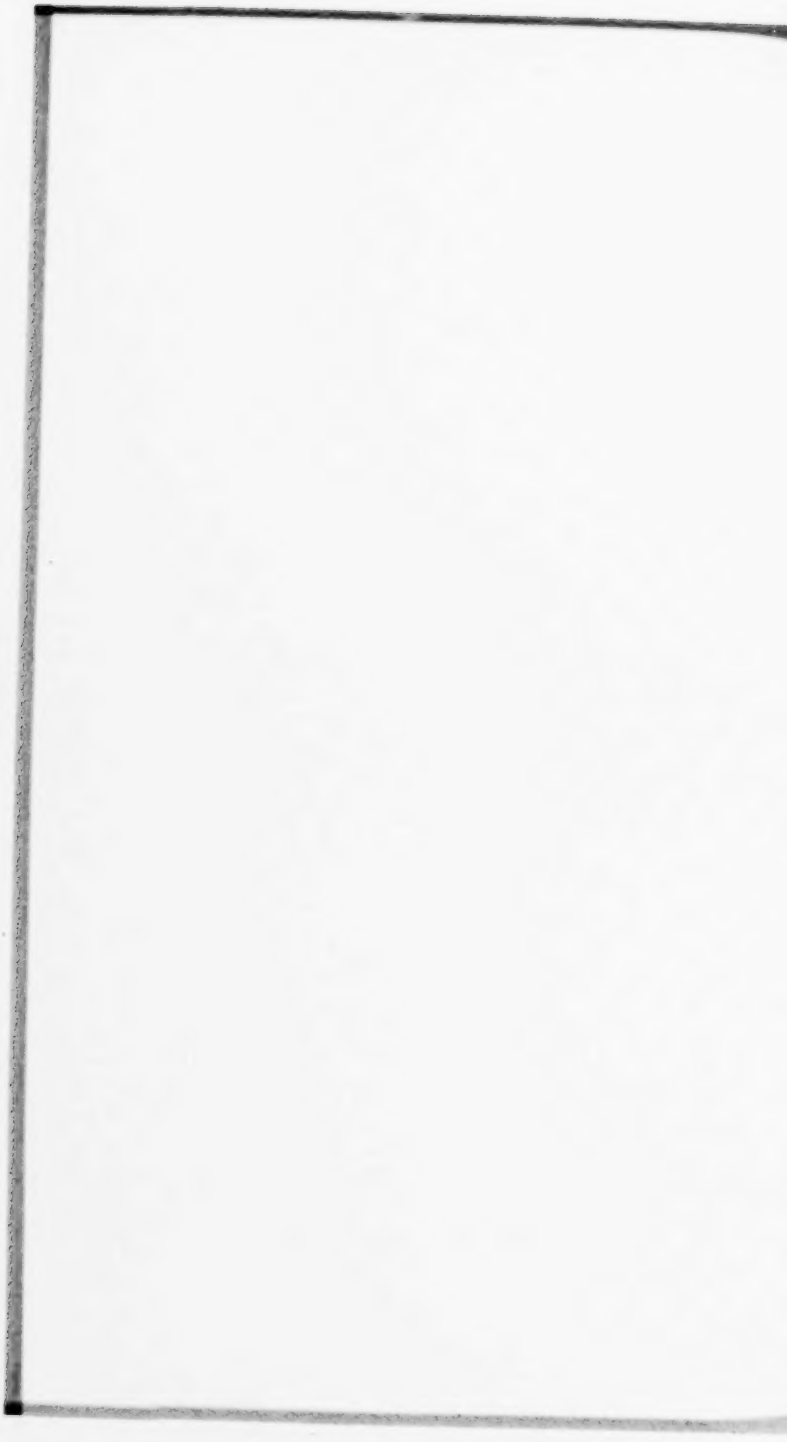

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Construction Workers, Affiliated with the United Mine Workers of America; District 50, United Mine Workers of America, and United Mine Workers of America, (herein sometimes referred to as "UCW", "District 50" and "UMWA", respectively) and each of them, pray that a writ of certiorari issue to review the final judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on April 20, 1953, wherein said Supreme Court modified the judgment of the Circuit Court

of the City of Richmond, Virginia, of July 5, 1951, against petitioners and in favor of Laburnum Construction Corporation, a corporation (hereinafter referred to as "Laburnum"), in the amount of $275,437.19, "by striking therefrom the sum of one hundred forty-six thousand, one hundred eleven dollars and ten cents" but affirming the balance of said judgment for the sum of one hundred twenty-nine thousand, three hundred twenty-six dollars and nine cents, with interest thereon at 6% per annum from February 16, 1951, until paid, and costs, and ordering petitioners to pay Laburnum its costs in the prosecution of the writ of error and supersedeas in the Supreme Court of Appeals of Virginia. (R. 1974) [1]

A transcript of the record in said case, including the proceedings in the Supreme Court of Appeals of Virginia [2] is furnished herewith, in accordance with the Rules of this Court.

OPINION BELOW

The opinion of the Virginia Supreme Court appears at page 1945 of the printed record. It is reported in 75 S. E. 2d 694 (Advance Sheet, June 4, 1953).

JURISDICTION

The judgment of the Virginia Supreme Court was entered on April 20, 1953. (R. 1973) No petition for rehearing was filed either by petitioners or by Laburnum. The jurisdiction of this Court is invoked under 28 U. S. C., section 1257 (3).

By notice of motion for judgment Laburnum instituted against petitioners in the Circuit Court of the City of Richmond, Virginia (hereinafter called "trial court"), a *tort* action for recovery of compensatory and punitive damages of $500,000. (R. 2-19) Petitioners filed pleas of not guilty

[1] Herein the abbreviation "R" refers to the printed record. A stipulation has been filed regarding the printed record for purposes of the petition for writ of certiorari.

[2] The Supreme Court of Appeals of Virginia is referred to as "Virginia Supreme Court" or the "Virginia appellate court".

(R. 19) and grounds of defense, denying the material allegations of said notice (R. 74-81, 102-104); in a jury trial petitioners were found "jointly and severally liable" and damages were assessed at $275,437.19, representing $175,437.19 compensatory damages and $100,000 punitive damages. (R. 147, 1887-1888) Petitioners moved to set the verdict aside as contrary to the law and the evidence and to grant petitioners a new trial. (R. 147-150) Pending such motion, petitioners filed their motion to dismiss plaintiff's notice of motion for judgment and to enter judgment for petitioners on the ground that the court was without power, authority and jurisdiction to hear and determine the issues in the action because of the provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, c. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8 of the Constitution of the United States. (R. 151) The trial court overruled both motions (R. 152) and on July 5, 1951, entered judgment in favor of Laburnum and against petitioners, jointly and severally, for $275,437.19, with interest at 6% per annum from date of the verdict until paid, and costs. (R. 152-153) Petitioners' exceptions are noted. (R. 152-153)

Thereafter petitioners duly filed their Notice of Appeal and Assignments of Error. (R. 154-179) [3] Upon petitioners' petition for writ of error and supersedeas,[4] the Virginia Supreme Court on January 24, 1952, awarded a writ and supersedeas. (R. 1943) In the Notice of Appeal and Assignments of Error (R. 154-179) and in said petition, petitioners asserted (R. 154, Tr. 1985):[5]

> "1. The Trial Court erred in refusing to sustain and in overruling the defendants' motion to dismiss the plaintiff's notice of motion for judgment and to enter final judgment for the defendants on the ground

[3] Pursuant to Rule 5:1, Section 4 of the Rules of the Supreme Court of Appeals of Virginia. The notice stated, *inter alia*, petitioners' intention to apply for a writ of error and supersedeas. (R. 154)

[4] By stipulation of counsel, the petition "need not be printed".

[5] "Tr." refers to the certified transcript of the record filed in the Supreme Court of the United States.

that the Court was without power, authority and jurisdiction to hear and determine the issues in this action because of the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, C. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8, of the Constitution of the United States. The Trial Court's action was repugnant to, and in violation of, said statutory and constitutional provisions.

"2. The Trial Court erred in entering the judgment of July 5, 1951, on the verdict of the jury, that the plaintiff recover of the defendants, jointly and severally, the sum of $275,437.19, with interest and costs, because the Trial Court was without power, authority and jurisdiction to enter said judgment because of the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, C. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8 of the Constitution of the United States, and said judgment is void because it is repugnant to, and in violation of, said statutory and constitutional provisions."

In its opinion filed April 20, 1953 (R. 1945) the Virginia Supreme Court, dealing with the issue of the trial court's power, authority and jurisdiction to hear and determine the issues involved in the action for the reasons aforesaid, held the "motion to dismiss was properly overruled" and rejected petitioners' contention that because Laburnum's notice of motion and the jury's verdict of petitioners' liability were grounded upon conduct which constituted an unfair labor practice within the meaning of Section 8 (b)(1)(A) of the Labor Management Relations Act, 1947 (herein called "Act"), for which the Act provided exclusive remedies and procedures, superseding a common-law tort action for damages in a state court, the trial court was deprived of jurisdiction to hear and determine the instant action for damages based upon such conduct and to enter its said judgment of July 5, 1951, against petitioners, and each of them. It declared (R. 1948):

"We may assume, without deciding, that the acts of the defendants so affected interstate commerce as to come within the purview of the Act and, at the in-

> stance of the plaintiff, could have been dealt with in the manner there prescribed. But it does not follow that that was the only redress open to the plaintiff. It did not seek relief because the acts of the defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common-law *tort* for which admittedly the Act affords no redress";

that state courts have not "been deprived of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce" (R. 1949), and that (R. 1949-1950):

> "While the Act[6] provides a remedy to restrain the commission of acts constituting unfair labor practices, there are no words which indicate that such remedy is exclusive, or that the Act was designed to deprive an employer or his employees of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices. Nor does the exercise by the State of its jurisdiction in enforcing such cause of action conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected."

Having so concluded and held, the Virginia Supreme Court, upon a consideration of the issues of petitioners' liability and the amount thereof, approved the jury's verdict of petitioners' liability (R. 1957) but, holding that the jury's award of certain elements of damages was not warranted under the evidence (R. 1963-1965, 1972) and that Laburnum was entitled to recover compensatory damages of $29,326.09 and punitive damages of $100,000, the Virginia appellate court concluded that "there is error in the judgment complained of", modified the trial court's judgment "by striking therefrom the sum of one hundred forty-six thousand, one hundred eleven dollars and ten cents" but affirmed "the balance of the judgment for the sum of" $129,326.09,

[6] Labor Management Relations Act, 1947.

with interest and costs, and ordered petitioners to pay the costs in said appellate court and its judgment certified to the trial court.[7] (R. 1973-1974)

QUESTION PRESENTED

Whether the Labor Management Relations Act, 1947, provides exclusive remedies and procedures for the commission of acts defined in Section 8(b)(1)(A) thereof as unfair labor practices by labor organizations and their agents so as to foreclose the jurisdiction, power and authority of a state court to hear and determine the issues in a common law *tort* action instituted by an employer against labor organizations for the recovery of damages based upon the alleged commission of acts for which a state-court jury by verdict, approved by both the state trial and appellate courts, has found the labor organizations liable, and which acts fall within the ambit of conduct defined in said Section as unfair labor practices, and to enter a money judgment against the labor organizations therefor.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional provisions involved consist of the commerce clause of Article I, Section 8 of the Constitution of the United States. The pertinent statutory provisions involved are Section 1, Section 101 amending Sections 1, 2, 3, 7, 8, subsection (b)(1)(A), 10, subsections (a), (b), (c), (e), (f), (j) (1), and 14 (b) of the

[7] In its opinion (R. 1973) the Virginia Supreme Court cites Virginia Code, Section 8-493 as its authority to modify the judgment under review by striking a portion of the money judgment and affirming as to the balance. Such statutory authority is as follows:

> "*Decision of Supreme Court of Appeals.*—The Supreme Court of Appeals shall affirm the judgment, decree or order if there be no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment, decree or order as to the court shall seem right and proper *and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A civil case shall not be remanded for a trial de novo except when the ends of justice require it,* but the Supreme Court of Appeals shall, in the order remanding the case, if it be remanded, designate upon what questions, or points a new trial is to be had." (Emphasis supplied)

National Labor Relations Act, and Section 301, 303 and 501, all of the Labor Management Relations Act, 1947. These constitutional and statutory provisions are set forth in Appendix A hereto.

STATEMENT

On November 16, 1949, Laburnum instituted in the Circuit Court of the City of Richmond, Virginia, its notice of motion for judgment (R. 2) seeking against petitioners "damages both actual and punitive" in the sum of $500,000.00. (R. 12) Laburnum's theory of liability, manifest from the notice's allegations and Laburnum's requested instructions approved and read to the jury by the trial judge [8] is that Laburnum's work as a contractor in Breathitt County, Kentucky, was stopped, its contracts cancelled, its property and reputation damaged, and other contracts for work lost because W. O. Hart, a field representative of UCW, had sought, and Laburnum had refused, to have Laburnum recognize UCW as the sole bargaining agent for its employees in said Breathitt County, and Hart in an effort to organize Laburnum's employees, had then taken "a mob of men variously estimated at between 75 and 100 men," to Laburnum's job site during July, 1949,

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[8] Laburnum offered, and the trial court read to the jury, Instruction No. 5-A in which petitioners' liability was premised upon jury belief that W. O. Hart

> "* * * while acting within the scope of his employment or authority, went to plaintiff's job site in Breathitt County, Kentucky, on July 26, 1949, with a disorderly crowd of men and for the purpose of organizing plaintiff's employees, and, that, by intimidation, threats, acts of violence or coercion, said Hart and his crowd of men caused plaintiff's workmen to leave their job, and put them in such fear as to cause them to refuse to return to work thereafter, . . . (R. 132-133)

Instruction No. 7, offered by Laburnum and approved by the trial court (R. 133), is substantially the same as Instruction 5-A above.

Instruction No. 8, offered by Laburnum and read to the jury (R. 134), instructed the jury that both compensatory and punitive damages were warranted if, *inter alia*, the jury believed that for the purpose of "organizing the unorganized"

> "* * * Hart led men to plaintiff's job site in Breathitt County, for the purpose of compelling the employees of plaintiff to join one of the defendant unions, irrespective of such employees' wishes, and . . . Hart or others at his direction, by means of threats and intimidation, backed up by overwhelming force, did in fact compel some employees of plaintiff to 'sign up' with one of the defendant unions, and forced others to quit work. . . ."

and "in violent language" told Laburnum's employees they would not be permitted to work unless they joined UCW, and that Hart and the men with him were prepared to use force to hold a picket line, which Hart established, to prevent the employees from working, and because of such threats Laburnum's employees ceased their work and refused to return thereto. Petitioners' pleadings, the jury trial and verdict and subsequent proceedings have already been related, *infra*, pp. 2-6, to which reference is now made.

The factual situation, pertinent to the instant issue herein presented, is as follows:

Laburnum, a Virginia corporation with its home office in Richmond, Virginia (R. 455), specializes in industrial construction work (excepting roads and bridges). (R. 456) From May, 1942 to December, 1949, according to Laburnum, construction work, performed in nine different states (R. 457), aggregated $20,253,965.49. (R. 566, 656, 658) Its annual volume of business averages $2,000,000.00. (R. 458)

A "closed shop contract", dated April 15, 1947, between Laburnum and Richmond Building and Construction Trades Council, provided that Laburnum would employ only members of local unions associated with Council and that where no such locals had jurisdiction, Laburnum would request affiliated members of the AFL National Building Trades Department to furnish qualified workers and give to members thereof employment preference. (R. 12-17; 739-740).[9]

From September 6, 1947 until the end of 1949, Laburnum performed work in Kentucky and West Virginia, costing in excess of $650,000, for Pond Creek Pocahontas Company and Island Creek Coal Company[10] and subsidiaries (R. 487-488), third largest coal producers in the United States and the largest in West Virginia in 1948 and 1949. (R. 1002). Pond Creek began to mine coal at its No. 1 Mine, Evanston, Kentucky, during June, 1949, and a substantial

[9] This agreement, without definitive terminal date, could be terminated on April 15, 1949, and on April 15 of each year thereafter, by three months' written notice. (R. 16) No effective termination notice was given by either Laburnum or Council. (R. 739)

[10] These two companies are hereinafter referred to as "Pond Creek" and "Island Creek", respectively.

part of such coal was shipped by the Chesapeake & Ohio Railway Company from the place it was mined at Evanston, Kentucky, to points outside of Kentucky during June and July, 1949. (R. 1818)

On October 28, 1948, Laburnum and Pond Creek entered into a written agreement for the construction of a coal preparation plant at Pond Creek's No. 1 Mine in Breathitt County, Kentucky. In procuring carpenters and millwrights for this work Laburnum contracted with an AFL affiliate [11] "for the duration of this job". (R. 748) Laburnum procured other craftsmen from other AFL affiliated local unions; but no AFL union furnished laborers to Laburnum, who hired "local labor near the job site". (R. 513) Admittedly (R. 744-747), the carpenter-millwright contract did not cover Laburnum's laborers, and Paintsville Local Union No. 646 had not been certified by National Labor Relations Board as collective bargaining agent for Laburnum's employees.

Subsequent to the October 28, 1948, agreement for the coal preparation plant, Laburnum procured other contracts with Pond Creek, Island Creek and "various associated companies", including $542,500 of additional work which Laburnum contended (R. 636-637, 1529), the jury found and the Virginia Supreme Court agreed (R. 1962), it would have been awarded "but for the disruption of the business relationship by the acts of the defendants' [petitioners] agents".

In July, 1949, Laburnum had 64 employees at the Breathitt County project, of which number 16 were employed as laborers. (R. 666, 667) Laburnum's laborers were unorganized (R. 1414), wanted to be organized (R. 1416) and there was a movement among them to seek membership in some union. (R. 1396) On July 8, 1949, four

[11] Paintsville Carpenter Local Union No. 646, United Brotherhood of Carpenters and Joiners of America. A question arose whether the local at Paintsville or an AFL local at Prestonsburg, Kentucky, had jurisdiction, and subsequent to the above-mentioned contract with Paintsville Local Union No. 646, jurisdictional friction developed also with an AFL affiliate local union at Salyersville, Kentucky. (R. 741-742)

laborers "signed up" with Hart (R. 1255-1256, 1304) who, being advised on July 12 that the laborers wanted to see him, left word for them to attend a meeting on July 24.

On July 13 or 14 [11a] Hart 'phoned from Pikeville, Kentucky, to Laburnum's president (A. Hamilton Bryan) in Richmond, Virginia. Bryan's version, denied by Hart (R. 1257-1258), is that Hart told him "Laburnum was working in United Mine Workers' territory", that he (Hart) intended "to organize all of" Laburnum's employees; and that if Laburnum did not "recognize his organization", he "would close the job down" (R. 532) and that it would be necessary to increase laborers' pay from 90¢ (R. 1393) to $1.36 an hour and carpenters' pay to $1.86 an hour. (R. 561). Bryan immediately undertook to have Laburnum's laborers join AFL unions as carpenter helpers (R. 539, 753-754)—a plan which Bryan had previously employed at another plant which District 50 sought to organize (R. 1363, 1365-1372)[12]—and instructed that one of Laburnum's employees, an official of the carpenters' local union at Salyersville, be "allowed time to go and talk" to the laborers and "sign them up". (R. 755) His instructions were carried out. (R. 755).[13] The applications were never returned to the local. (R. 1390) Several witnesses, testifying that they signed such applications, related that they heard nothing further concerning them. (R. 1403, 1410, 1416-17)

On July 24, nine of Laburnum's sixteen laborers, who already were or became UCW members, (together with employees of two other contractors doing work at Pond Creek's No. 1 Mine) met with Hart and, upon Hart's informing them that Laburnum had had sufficient time "to answer our call by letter" and "it was up to them to take whatever action they deemed necessary", elected a negoti-

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11a Unless indicated otherwise, the dates refer to 1949.

12 Bryan admitted that on this occasion he contacted an AFL representative and told him that "if these men were not in his union he had better get busy". (R. 728)

13 Indicating his determination to control representation of Laburnum's employees, Bryan proclaimed to the jury, "I have tried to say repeatedly that we are lined up with the A. F. of L." (R. 759)

ating committee (R. 1420), unanimously voted to strike (R. 1258-1261, 1420), planned strike procedures (R. 1420) for "union recognition and union contract, in the way of more wages and other conditions of employment". (R. 1261)

On the night of July 25, Bryan left Richmond for the Breathitt County job site pursuant to a telephone conversation from Laburnum's superintendent who reported that the next day UCW "were coming to the job . . . to stop our employees from working and to close down the job". (R. 543) En route, Bryan attempted to call Hart but in his absence had a telephone conversation with David Hunter, Regional Director for District 50 and for UCW, requesting Hunter to direct Hart not to interfere with Laburnum's work before Bryan had an opportunity to talk with Hart at the job site. (R. 544) According to Bryan, Hunter stated he would try to get the message to Hart (R. 544) but when Bryan reached the job site between 2:30 and 3 P. M. on July 26, work had stopped. (R. 545-546)

In both the trial court and in the Virginia Supreme Court petitioners contended that cessation of work occurred and continued because of Laburnum's employees' refusal to cross a peaceful picket line, while Laburnum contended that the employees' refusal to work resulted from threats of violence and intimidating conduct for which petitioners are legally responsible.

While petitioners' version is that Hart (UCW representative) was seeking UCW members among the unskilled laborers and carpenter helpers only and sought the support of all workmen by inviting them to join the strike "if they wanted to" and that the unskilled laborers quit work, joined the strike and of the total of sixteen, twelve signed UCW membership cards and three signed District 50 cards (R. 665-667, 1270-1273) voluntarily (R. 1264, 1267, 1349, 1386, 1387, 1398, 1406-1407, 1410-1412, 1423), Laburnum relied upon testimony—denied by petitioners (R. 1264, 1282-1284, 1338, 1411)—that Hart with a group of

men (estimated variantly from 20 to 150), which admittedly included some of Laburnum's laborers (R. 927-928), came to Laburnum's job site on July 26 and insisted that the job belonged to UCW and he was taking over the job and that all employees join UCW, under threat that if they did not do so "you are going to have to quit work" or "we will kick you out of here" (R. 861, 902, 912-913, 931, 949); and two witnesses related that two unidentified laborers were forced to sign with UCW. (R. 853, 979-980) The Virginia appellate court declared that the jury verdict "resolved this conflict in favor of the plaintiff." (R. 1954) Witnesses for Laburnum smelled whiskey on the group of men with Hart and two of them had "guns sticking under their belts" and "saw prints of guns under their belts" (R. 844, 902) and they had knives "whittling around on sticks." (R. 917, 961) Other witnesses, both for Laburnum (R. 878, 887, 934) and for petitioners (R. 1345, 1351, 1392-1393, 1397, 1405, 1422) saw no drinking or smelled any whiskey and saw no guns, and Bryan's report of the July 26 incident stated that "nobody saw any guns." (R. 790) The Virginia appellate court found (R. 1953) that "There is evidence that this 'was a very rough, boisterous crowd', that some of the men used abusive language, that some were drunk, and some carried knives and guns."

Witnesses for both petitioners (R. 1268, 1349) and Laburnum (R. 949-950, 964) agreed that the AFL representative told Hart that his membership would continue to work if "you don't put on a picket" (R. 949, 964) but agreed that they would honor a picket line (R. 869, 879, 936, 984-985, 994) and so instructed Laburnum's employees. (R. 888) Hart then wrote and caused to be posted a picket sign reading "UMWA Pickett Line. Contractors—Laburnum" (R. 567) and picket signs reading "District 50, UMWA, Local 778-A—Picket Line" and

"On Strike
Local Union No. 778-A
Carpenters Helpers and Laborers
District 50, UMW of A"

were at Laburnum's job sites on July 31. (R. 586-587) Although the AFL representative agreed "it is just ingrained with a union man to honor a picket line" (R. 874), and witnesses for petitioners and Laburnum agree that a statement by Hart that he would bring a large number of men (estimated at 300 to 500 and admitted by Hart as 500) from Beaver Creek was made after the AFL representative had agreed to honor the picket line (R. 949-950, 1276), and some skilled workers declared they were not afraid to return to work (R. 1321, 1330, 1340-1341, 1347, 1349-1350) and that they honored the picket line (R. 973, 1340-1341, 1399), the trial court permitted, and the Virginia Supreme Court approved (R. 1968), the AFL representative to testify (R. 878) that his reason for telling Hart he would honor the picket line was, "It was my only way out" and witnesses, when asked "why" they had not gone to work, to answer that "we were afraid to" (R. 846), or "There were too many fellows there talking too big for me" (R. 932), or "they said not to" (R. 950) or "I didn't feel it was safe" (R. 975, 982), or "I was scared" (R. 952), or "I didn't think it was a healthy thing to do" (R. 974), or "I felt there was danger there" (R. 992) and other witnesses to give substantially similar answers. (R. 906, 913, 925, 947) The Virginia appellate court (R. 1955), conceding that

> ". . . some of the Laburnum employees refused to return to work because Hart had posted picket signs on the job site and these employees refused to pass these signs or cross the so-called 'picket lines' ",

declared that

> ". . . there is ample evidence to support the finding that the plaintiff's employees refused to resume their work because of the threats and conduct of Hart and his associates".

On July 27 twenty-five or thirty skilled workers with Bryan, pursuant to their determination at a local union meeting on the previous night, drove their automobiles, in

caravan fashion, to Laburnum's job site. There Bryan and the employees found a picket sign; the men halted; Bryan "tore the picket sign down" and threw it away (R. 1320, 572); and a group of seven or eight employees, at Bryan's invitation, and led by him, returned to work. (R. 572-573) Hart was not there (R. 1304) but another UCW representative was, and he explained to Bryan that he was there to "bring about a settlement if I possibly can", that UCW had no intention of getting the carpenters to join and that the carpenters were at liberty to cross the picket line if they felt like so doing, when Bryan said, "All right let's go to work". The men ceased work when Laburnum's superintendent and an AFL steward "decided we would cease for a day or two and see if it wouldn't die down". (R. 968) Bryan conceded that the UCW representative made no threats (R. 793) but several witnesses for Laburnum testified that two unidentified men, sitting on a lumber pile, said, "If you men works, there will be plenty of men here in a little bit and they will come rough" (R. 963) and that "they will fish you out of that pond". (R. 851) The Virginia Supreme Court declared that some of the workers on July 27 "were again confronted by representatives of the opposing labor organization who repeated their abusive threats, and consequently were afraid to go back to work". (R. 1955)

Admitting that on August 1 Hart stated he represented and sought recognition for the laborers only, Bryan proposed, and Hart rejected (R. 796), a plan that Laburnum could get along without laborers and that their work be done by carpenters. (R. 796) The Virginia Supreme Court also adopted Bryan's version—denied by Hart (R. 1280)—that on August 1 Hart " 'left no doubt in anybody's mind that he was going to have people to stop any men from working who tried' " and " 'continually threatened' to bring a large crowd of people brom Beaver Creek and other places to stop us from working . . . unless we signed a paper recognizing his organization as the representative of the

laborers' " and that if the Laburnum men " 'went back to work he was going to close down the mine operations by stopping the United Mine Workers from working for Pond Creek' ". (R. 1955-1956) Bryan admitted that no one shot "or made a pass" at him, or prevented his going about, that no one got "a mauling"; and that he heard of no one being "shot at" or of any property being destroyed. (R. 803-804)

Although Bryan acknowledged that Laburnum had worked in plants where employees were represented by District 50 and by United Mine workers, and Laburnum's employees were AFL members (R. 725), when Hart suggested to Bryan that "we work together", and that "we are doing it in other places", Bryan answered, "Well, it just won't work." (R. 1281) Bryan refused to recognize UCW because, as he stated, of the agreement with the AFL local unions and the Richmond Building and Trades Council (R. 531) and AFL would withdraw its members from other jobs. (R. 1424)

On August 4 Pond Creek cancelled its contract for the coal preparation plant which was 95% completed (R. 523-524) and its subsidiary (Spring Fork Development Company) terminated its contract for 25 dwellings. (R. 600-602) The next day Bryan conferred with Hunter who expressed the view that the parties should be able to make an agreement "for the laborers" and that UCW people would work peacefully alongside of AFL men. Bryan replied that he "just didn't think that would work out"; that the "wage rate of $1.36 was preposterous". The Virginia appellate court found, as Bryan claimed (R. 575), that he sought, but was denied, police protection (R. 1955), but Bryan did not claim that he undertook to process any unfair labor practice charge with the National Labor Relations Board (herein called "Board" or "NLRB") against petitioners. He advised Hunter that he "expected to hold him and the United Mine Workers responsible for what had happened." (R. 609, 611, 612)

Laburnum continued to do work for Island Creek. (R. 664-665) During September, 1949, through December, 1949, it submitted bids on projects at Pond Creek's invitation. (R. 669-672) Pond Creek would have awarded the work to Laburnum if it had been the low bidder. (R. 999) Meanwhile, on November 16 Laburnum instituted its instant action against petitioners (R. 2) and contended at the trial that "the business relationship was destroyed on July 26." (R. 1633)

In the Spring of 1950, Island Creek invited Laburnum to submit a bid on proposed construction in West Virginia. Bryan inquired of Hunter if he would expect Laburnum to use UCW members and to make an agreement with UCW. Receiving an affirmative answer, Bryan reported to Island Creek that Hunter had stated that without a UCW contract, he "would absolutely do everything in his power to see that we do not build those buildings". Bryan's memorandum of Hunter's statement, not in accord with his report to Island Creek, declared, in part, that Hunter stated (R. 801):

> "* * * he would attempt to organize our laborers and our other workers, and that if he was successful he would expect us to make a contract with UCW granting recognition to it."

On May 18, 1950, Island Creek wrote to Bryan stating that it "had about four or five other reputable and well-qualified concerns, which have contracts with the United Mine Workers, that are going to bid" and because "of the facts outlined to me" Laburnum was requested to refrain from bidding. (R. 673-674) The Virginia appellate court concluded (R. 1957):

> "Hence, there is ample evidence to sustain the finding that the acts and conduct of Hart in July, 1949, ratified by Hunter, disrupted the business relationship between Laburnum, Pond Creek Pocahontas Company and Island Creek Coal Company, and entitled Laburnum to an award of damages against Hart's principals."

Under instructions of the trial court, there was presented to the jury the issue whether Laburnum's alleged damages had resulted from the wrongful conduct of Hart and the men with him, as submitted by Laburnum's instructions 5-A, 7 and 8 (*infra*, p. 7) or whether, as petitioners contended in their instruction "E" (R. 139), such damages followed because Laburnum's employees "refused to work solely because of the existence of a peaceful picket line and that they would have worked if there had been no picket line." The jury having found against petitioners, the Virginia appellate court agreed that "because of the insolent and abusive language and threats of Hart and those accompanying him, the Laburnum employees, who were greatly outnumbered, were intimidated and afraid to proceed with their work" and that the "employees refused to resume their work because of the threats and conduct of Hart and his associates". (R. 1955) Petitioners urged in the Virginia appellate court, as in the trial court, that, under declarations of the National Labor Relations Board, such conduct involved unfair labor practices within the purview of Section 8(b)(1)(A) of the Act, and that by adoption of the Act Congress had preempted the field of labor relations and had provided an exclusive federal remedy in Section 10 thereof and thereby foreclosed to the state courts jurisdiction to entertain any action for damages based upon such conduct. "Assuming without deciding, that the acts of the defendants (petitioners) so affected interstate commerce as to come within the purview of the Act" and, at Laburnum's instance, could have been dealt with in the manner therein provided, the Virginia Supreme Court held that "there are no words which indicate that the remedy" provided for in the Act to restrain the commission of unfair labor practices "is exclusive", or that the Act "was designed to deprive an employer or his employees of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices" and that the exercise by the

State of its jurisdiction in enforcing such cause of action did not "conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected." (R. 1949-1950) These pronouncements, and others, by the Virginia appellate court to sustain the state court's jurisdiction, appear herein at pages 5 and 6, to which reference is made.

The Virginia appellate court, having concluded that the trial court had jurisdiction and that petitioners' motion to dismiss was properly overruled, and that the evidence supported the jury's verdict of petitioners' liability, found that there was error in the amount of the jury verdict, modified the trial court's judgment in Laburnum's favor against petitioners and affirmed the balance as herein shown (*infra*, pp. 5-6).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Appeals of Virginia erred:

1. In holding that petitioners' motion to dismiss Laburnum's notice of motion for judgment and to enter a final judgment for petitioners on the ground that the trial court was without power, authority and jurisdiction to hear and determine the issues in said action "was properly overruled" and in failing and refusing to hold that said motion should have been sustained.

2. In holding that the Act did not provide an exclusive remedy for "the acts of defendants", that the remedy provided for in the Act was not "the only redress open to the plaintiff" and that Laburnum "did not seek relief because the acts of the defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common-law tort for which admittedly the Act affords no redress."

3. In holding that the Act did not deprive state courts "of their traditional power and jurisdiction to deal

with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce."

4. In holding that "there are no words" in the Act which indicate that the remedy provided in the Act "is exclusive, or that the Act was designed to deprive an employer or his employees of the common law right of action in a State court for acts of violence and intimidation which may constitute unfair labor practices."

5. In holding that "the exercise by the State of its jurisdiction in enforcing" a cause of action by an employer for damages for acts of violence or intimidation which may constitute unfair labor practices does not "conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected."

6. In affirming the judgment of the Circuit Court of the City of Richmond, Virginia, to the extent of $129,326.09, with interest at 6% per annum from February 16, 1951, until paid, and for costs expended by Laburnum "about the prosecution of its notice of motion for judgment in said circuit court" and ordering that Laburnum recover of petitioners its costs by it expended "about the prosecution of the writ of error and supersedeas" in said Virginia Supreme Court.

7. In failing and refusing to reverse, set aside and hold void the judgment of said Circuit Court of July 5, 1951, for $275,437.19, with interest and costs, in its entirety, and to set aside the jury verdict and enter judgment for petitioners, and each of them.

8. In failing and refusing to find and hold that the provisions of the Act were applicable to the facts of the instant case.

9. In failing and refusing to hold and conclude (1) that the Act provides exclusive remedies and procedures for conduct proscribed by Section 8(b)(1)(A) thereof;

(2) that the Act deprives an employer of his common-law right of action in a state court for damages based upon such conduct; (3) that by reason of the provisions of said Act, the Circuit Court of the City of Richmond, Virginia, was without power, authority and jurisdiction to hear and determine the issues in the instant case and to enter its said judgment of July 5, 1951, against petitioners, and each of them, and such judgment is void; and (4) that judgment should have been entered for petitioners, and each of them, and Laburnum's notice of motion dismissed.

REASONS FOR GRANTING THE WRIT.

1. The Virginia Supreme Court's decision and judgment in the instant case conflict with those of the Connecticut Supreme Court of Errors in *McNish* v. *American Brass Company et al,* Conn. , 89 A. 2d 566 [1952; cert. denied, U. S. , 97 L. ed. (Adv. op., p. 247)] wherein plaintiff sought damages for lost wages from an employer and a labor union for conspiracy to oust him from employment and an injunction to compel the performance of a collective bargaining agreement, but the Connecticut court, first finding that unfair labor practices under the Act were involved, concluded that plaintiff's remedy "lies within the exclusive jurisdiction of the" Board. (89 A. 2d 570).

Contrary to the Virginia Supreme Court's construction of the Act, other state courts have given judicial imprimatur to the principle that where the Act is applicable it controls to the exclusion of state law. See *Norris Grain Co.* v. *Nordaas,* 232 Minn. 91, 46 N. W. 2d 94 (1950), wherein the court declared that in "cases involving labor disputes in the field of interstate" commerce covered by the Act, the "Board has exclusive jurisdiction and the state courts have none"; also *Garner* v. *Teamsters, etc. Local Union No. 776, AFL,* 373 Pa. 19, 94 A. 2d 893, (cert. granted June 15, 1953, 73 S. Ct. 1136) where the Pennsylvania Supreme Court, one Justice dissenting, held the state court to be

without injunctive jurisdiction over conduct, unlawful under state law, but constituting an unfair labor practice under the federal Act. In *Costaro* v. *Simons*, 302 N. Y. 318, 98 N. E. 2d 454, (motion for reargument denied, 100 N. E. 2d 39), the Court of Appeals "read the complaint (to enjoin defendants from discharging plaintiffs under a collective bargaining agreement) as alleging that the controversy involves unfair labor practices" within the purview of the Act and dismissed the complaint for lack of jurisdiction of the subject matter. *Ryan* v. *Simons*, 100 N. Y. S. 2d 18 (1950), affirmed 98 N. E. 2d 707, cert. denied, 342 U. S. 897, involved an action to restrain a labor union and an employer from discriminating against plaintiff employees because of their non-membership in the union, brought upon the theory that the union had breached the common-law duty of agent to principal by entering into a union-shop agreement with the employer. The state courts (including the Court of Appeals) concluded the controversy concerned a federal unfair labor practice within the Board's exclusive jurisdiction. Likewise, the California court rejected the assertion of state jurisdiction in *Gerry of California* v. *Superior Court*, 32 Calif. 2d 119, 194 P. 2d 689, 696, "in the field of the jurisdiction vested in" NLRB, "except to the extent that it has been expressly conferred or ceded." Compare, however, *Goodwin's Inc.* v. *Hagedorn*, 303 N. Y. 300, 101 N. E. 2d 697; *Sommer* v. *Metal Trades Council*, 32 LRRM 2004 (Supreme Court of Calif., 1953), three Justices dissenting (32 LRRM 2010-2014); and cases cited in the Virignia Supreme Court's opinion (R. 1949-1950).

The decision and judgment likewise conflict with those in *Born* v. *Cease*, 101 F. Supp. 473 (USDC, Alaska, 1951) wherein the federal district court dismissed an action for damages brought by an employee-union member against a labor organization seeking reinstatement in the union and damages for exclusion upon its conclusion that "Courts have not by the Act of 1947 been given concurrent jurisdiction" with the Board "but only that jurisdiction explicitly provided" therein.

Where plaintiffs instituted injunction proceedings in state courts to enjoin picketing alleged to be illegal under state law, federal district courts professed the supremacy of the Act and the inapplicability of state law. *Pocahontas Terminal Corp.* v. *Portland Bldg., etc. Council,* 93 F. Supp. 217 (USDC, D. Maine); *Nash-Kelvinator Corp.* v. *Grand Rapids Bldg., etc. Council,* 30 LRRM 2466 (USDC, W.D., Mich., 1952, unreported in F. Supp.)

The conclusion and reasoning of the Virginia Supreme Court collides with those of Courts of Appeals in the Sixth, Seventh and Ninth Circuits. In an action for damages for contract violations instituted under the Act by an employer against a labor organization, the Sixth Circuit proclaimed that "Kentucky law does not control, for Congress has occupied the field and closed it to state regulation." *International Union of Operating Engineers* v. *Dahlem Construction Co.,* 6 Cir., 193 F. 2d 470, 475. The Ninth Circuit rejected an action for damages based upon alleged violation of Section 8 (b)(1) of the Act upon its profession that exclusive remedy therefor was in Board proceedings "except in so far as the district courts are given jurisdiction over certain suits for injunctions brought by the Government and over suits brought by private parties under Sections 301 and 303" of the Act. *Schatte* v. *International Alliance, etc.,* 9 Cir., 182 F. 2d 158. The Ninth Circuit likewise enjoined the enforcement of a state court injunction upon request of NLRB because the state-enjoined conduct fell within the exclusive control of federal tribunals as provided in Section 10(a) of the Act. *Capital Service, Inc.* v. *NLRB,* 9 Cir., F. 2d , 31 LRRM 2326 (January, 1953). The Seventh Circuit rejected a union's contention that a Wisconsin Employment Relations Board's order precluded the NLRB from finding it guilty of unfair labor practices and declared that NLRB had exclusive jurisdiction under said Section 10(a) and that its "exclusive function in this field may not be displaced by action before state agencies or by arbitration." *NLRB* v. *International Union,* UAW, 7 Cir., 194 F. 2d 698, 702.

In support of its conclusion, the Virginia Supreme Court cited *Russell* v. *International Union, etc.*, 64 So. 2d 384, 31 LRRM 2568, 2574, wherein the Alabama Supreme Court, upholding the state court's jurisdiction in a damage action for conduct violative of said Section 8(b)(1)(A), noted that there is "no authoritative holding from the Supreme Court of the United States on the matter now before us." Resolution of the foregoing conflict in the construction of a federal statute can be resolved only by this Court's determination of the question. See *Fischer* v. *Pauline Oil and Gas Co.*, 309 U. S. 294, 296.

2. The question presented is of importance in the construction and administration of the Act. Reliance of the Virginia Supreme Court upon *Erwin Mills, Inc.* v. *Textile Workers Union of America*, 234 N. C. 321, 67 S. E. 2d 372, and kindred cases cited (R. 1949)[14] to support its holding that the remedy provided by the Act for committing unfair labor practices is not exclusive and its reasoning challenges the Board's postion and the Court of Appeals' holding in *Capital Service, Inc.* v. *NLRB*, 9 Cir. F. 2d , 31 LRRM 2326, 2329, that "the control by the federal tribunals is exclusive" and that Section 10(a) of the Act gives to the state "a right of enforcement only by an agreement reached by it with the Board", as well as the NLRB's declaration of its exclusive jurisdiction in *H. N. Thayer Co.*, 30 LRRM 1184, 1185, that the Act vests the Board with "exclusive primary jurisdiction over all phases of the administration of the Act" including "regulatory power over the area of nonpeaceful means employed in labor controversies", and that a Massachusetts state court "had no power" to enjoin a strike which the state court had found to be illegal both in purpose and conduct under state law. See, however, *Texas Foundries, Inc.*, 31 LRRM 1224,

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[14] *Williams* v. *Cedartown Textiles*, 208 Ga. 659, 68 S. E. 2d 705; *International Moulders, etc.* v. *Texas Foundries*, Tex. Civ. App., 241 S. W. 2d 213; *State ex rel Allai* v. *Thatch*, 361 Mo. 190, 234 S. W. 2d 1; *Rice and Holman* v. *United Elec. Radio & Mach. Workers*, 3 N. J. Super. 258, 65 A. 2d 638.

1226. The Virginia Supreme Court's construction of the federal Act would be invitatory to employers to ignore the remedies and procedures provided in the Act by Congress and to circumvent such remedies and procedures, as well as the federal tribunals specified in the Act by Congress, and to seek instead a money judgment for alleged damages, a procedure which would frustrate, rather than effectuate, the specifically declared congressional policy of promoting the full flow of interstate commerce. Moreover, such construction flouts the clear intent of Congress of limiting damage actions for acts allegedly in violation of the Act to those instances which Congress specifically delineated in Sections 301 and 303 of the Act and *in such courts* as Congress therein vested jurisdiction. It is in the public interest that this Court review and resolve this important and unsettled question concerning the construction of the Act.

3. The decision of the Virginia Supreme Court is believed to be erroneous. Facts relating to Laburnum's business activities and the volume thereof have been related herein (pp. 8-9). It is clear that Laburnum's business is subject to the Board's jurisdiction and that the activities upon which Laburnum based its notice of motion and those upon which the jury found petitioners liable affect interstate commerce within the meaning of the Act. *NLRB* v. *Denver Bldg. and Construction Trades Council*, 341 U. S. 675, 683; *International Bro. of Electrical Workers* v. *NLRB*, 341 U. S. 694, 699; *Arthur G. McKee & Co.*, 94 NLRB No. 69, 28 LRRM 1054 (1951). Article 1, Section 8, Constitution of the United States grants unto Congress the power "To regulate Commerce . . . among the several states." This Court stamped as constitutional the congressional enactment of the Wagner Act (49 Stat. 449 et seq) in *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and therein recognized that acts growing out of labor disputes directly burdening or obstructing interstate commerce, or its free

flow, are within the congressional reach. Prior to Congress' enactment of the Act in 1947, this Court juridically recognized that conduct, not the subject of federal legislation, was subject to state regulation. In *Allen-Bradley Local* v. *Board*, 315 U. S. 740 (1942) it approved state condemnation of a labor organization's coercion and intimidation of employees because of the lack of federal regulation. "This conduct is governable by the State or it is entirely ungoverned," stated the Court in *International Union* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 254. However, the 1947 Act supplied federal regulation for union conduct: the Act "is a comprehensive code which governs the entire field of labor-management relations." Ratner, *Problems of Federal-State Jurisdiction in Labor Relations*, New York University, Conference on Labor, Fifth Annual, 77, 86. As Section 1 relates, the Act's policy is "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, . . . to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare . . ." In amending Section 1 of the Wagner Act, Congress found that the elimination of certain practices by labor organizations "is a necessary condition to the assurance of the rights herein guaranteed". To effectuate that policy, Congress, in Section 7 of the Act, provided that employees shall have the right

> "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *";

and in Section 8(b)(1)(A) Congress provided that "It shall be an unfair labor practice for a labor organization or its agents—

to restrain or coerce employees in the exercise of the rights guaranteed in Section 7 . . ."

In Section 10(a) Congress empowered the Board to prevent labor organizations from engaging in unfair labor practices, a power not affected "by any other means of adjustment or prevention that has been established by agreement, law, or otherwise" but Congress expressly empowers the Board to cede jurisdiction to any State agency over cases in any industry (excepting mining and three others) where the state law is consistent with the Act. In Section 10, it provided remedies for the Act's violation through exclusive procedures before NLRB and in federal courts, calling for cease and desist orders and injunctions. Section 10(b) of the Act authorizes the filing of unfair labor practices charges with the Board and issuance of a Board complaint, while Section 10(j) and (l) empowers the Board—*but not a charging party*—to seek injunctive relief in a federal district court. Under Section 10(c), the Board may issue its order requiring the charged party to cease and desist from the alleged unfair labor practice and to take such affirmative action as will effectuate the Act's policies, and, pursuant to Section 10(e), may petition a federal court of appeals for a decree enforcing the Board's order. Also, under Section 10(c), if the Board finds that no unfair labor practice has been committed, it dismisses the complaint; and under Section 10(f), "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States Court of Appeals. . ."

The cases cited in points 1 and 2 hereof to support petitioners' position that the Act has preempted the field of labor relations and thereby foreclosed to the states jurisdiction to deal with conduct proscribed by Section 8(b)(1)(A) correctly interpret the federal Act. The Fourth Circuit, in the *Amazon Cotton Mill* case (167 F. 2d 183, 187), indicated that

"a remedy in the courts not expressly given is not to be inferred; and especially is this true where Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships * * *."

Congress was not silent concerning damage actions by private parties it deemed permissible for violation of the Act's provisions. It was specific in its designation of the courts in which such actions could be prosecuted. It provided, in Section 301, for suits for violation of contracts between employers and labor organizations and authorized such suits in federal district courts. In Section 303(a) it declared unlawful boycotts and other unlawful combinations and in subsection (b) it sanctioned actions for injury to business or property "by reason of any violation of subsection (a)" in any federal district court or "in any other court having jurisdiction of the parties." These sections bespeak the congressional intent to limit an employer's right to sue for damages to those situations made actionable by Sections 301 and 303 and to limit jurisdiction therefor to those courts which Congress specifically designated therein. *"Expressio unius est exclusio alterius"* is especially applicable in the construction of statutes. *United States* v. *Barnes*, 222 U.S. 513.

These statutory provisions challenge the Virginia Supreme Court's denial that the remedy afforded by Section 10 of the Act "was the only redress open to the plaintiff" (R. 1948) and challenge as well its determination and argument that "there are no words which indicate that such remedy is exclusive, or that the Act was designed to deprive an employer or his employees of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices." (R. 1949-1950) Moreover, such denial, determination and argument are likewise discordant with this Court's pronouncement in *Amalgamated Assn. of Street, etc. Em-*

ployees of America v. *Wisconsin Employment Relations Board,* 340 U. S. 383, 397-398, that Congress was "well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised", knew how to cede jurisdiction to the states and "knew full well that its labor legislation 'preempts the field that the Act covers in so far as commerce within the meaning of the Act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative." Therein (footnote 25, p. 398) this Court noted other examples "of congressional direction that states were to play in the area of labor regulation covered by the Federal Act", citing Sections "8(d), 14(b), 202(c) and 203(b), 29 USC (Supp. III) Sections 158(d), 164(b), 172(c) and 173(b)."

The federal Act preempted the field as to the conduct involved in the instant case; it expressly covers the subject matter; it prescribes the rights of the parties; and it provides for the promulgation of all procedures requisite to the enforcement of an adequate remedy for the proscribed conduct. Because of such legislation, the proceeding in the state court is superseded by federal law. Article VI of the Constitution of the United States provides, in part, that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Virginia Supreme Court notes that Laburnum "did not seek relief because the acts of petitioners' agents were unfair labor practices, nor is its present case predicated upon the Act". (R. 1948) While the acts of which Laburnum complained were not described in the notice of motion as unfair labor practices *eo nomine* , such omission did not prevent the court in *Born* v. *Cease* and *Ryan* v. *Simons,* both supra, from judicially declaring them to be such.

Moreover, the Virginia Supreme Court assumed, without deciding, that they were unfair labor practices. State court jurisdiction is not to be determined upon whether the claim is predicated upon state law or the Act, but the test is whether the matter involved lies within the "field" covered by the Act. If it does so lie, then the federal Act supersedes all substantive rights and remedies flowing from state authority. *Pocahontas Terminal Corp.* v. *Building Trades Council, supra.* The allegations of the notice of motion and the trial court's instructions to the jury (infra, p. 7) upon which the jury based its verdict that petitioners were liable to Laburnum, which verdict petitioners challenged in the Virginia appellate court but which that court approved, related to conduct which both NLRB and a federal court have said is interdicted by Section 8(b)(1)(A). *Sunset Line and Twine Co.*, 23 LRRM 1001; *Conway's Express*, 87 NLRB 972; National Labor Relations Board, Fifteenth Annual Report, p. 127; *Progressive Mine Workers of America* v. *NLRB*, 7 Cir. 187 F. 2d 298 (1951).

Nor is it material, as the Virginia appellate court observed, that Laburnum's action for damages was "for a completed common-law tort for which admittedly the Act affords no redress", for the matters involved in the instant case are in the field of labor relations and covered by the Act so that substantive rights and procedures derived under state law are superseded. Heretofore where Congress has undertaken regulation of commerce this Court has said that where a federal statute condemns an act as unlawful, the legal consequences are federal questions, the answers to which are derivatives from the federal statute and policy and conflicting state law and policy must yield. *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173. Where Congress has preempted the field, the states may not act concurrently (*Houston* v. *Moore*, 5 Wheat. 1; *Bethlehem Steel Co.* v. *N. Y. Labor Relations Board*,

330 U. S. 767), nor may state laws "be applied in coincidence with, as complementary to or as in opposition to, federal enactments." *Missouri Pacific R. Co.* v. *Porter,* 273 U. S. 341, 346. Where Congress has provided the liability for infractions, this Court has declared that whatever "Congress determines, either as to a regulation or the liability for its infringement, is exclusive of state authority." *Sherlock* v. *Alling,* 93 U. S. 99, 104; see also *Frazier* v. *Hines,* 260 F. 874, 880: "The rule is that, if the facts appear to bring the case under the act, the statute is exclusive . . . and no recovery can be had as in common law"; *N. Y. C. & Hudson R. R. Co.* v. *Tonsellito,* 244 U. S. 360; *Pennsylvania R. R. Co.* v. *Public Service Commission,* 250 U. S. 566, 569, where this Court declared that "when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them."

The Virginia Supreme Court relies, in part, upon its assertion that "there are no words which indicate that such remedy is exclusive." (R. 1949-1950) Though no words expressly assert that the Act's remedies exclude state court action, "It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting". *Bethlehem Steel Co.* v. *N.L.S.L.R.B., supra,* p. 772; also *Houston* v. *Moore, supra.* In addition to the discussion (infra, p. 27) showing that Congress sanctioned damage actions by private parties only in designated instances, the legislative history of the 1947 Act demonstrates that, except as otherwise expressly provided for in the Act, Congress intended to exclude remedies by private parties for violations of the Act. The cases cited and discussed in points 1 and 2 in support of petitioners' position have recognized that the Board's primary jurisdiction is exclusive. In *Amazon Cotton Mill Co.* v. *Textile Workers Union,* 4 Cir., 167 F. 2d 183, the

Fourth Circuit, reviewing the legislative history of Section 10(a) of the Act, concluded that the Board's jurisdiction is exclusive and forbids both injunctive and damage actions by private parties. Moreover, the Hartley Bill (H.R. 3020, 80th Cong., 1st Session), as introduced, authorized suits in federal courts by private parties for damages and injunctive relief for unlawfully preventing or attempting to prevent individuals in continuing employment by use of force or violence or threats thereof, but the Act rejected such proposal. NLRB, Legislative History of the Labor Management Act, 1947, p. 77-79. The House Report on H. R. 3020 noted that "by the Labor Act Congress preempts the field that the Act covers insofar as commerce within the meaning of the act is concerned." N.L.R.B., Legislative History of the Labor Management Relations Act, 1947, p. 335.

Heretofore this Court has recognized that the Act has preempted the field in respect to jurisdiction to enforce the unfair labor practices specified in the Act to the exclusion of state tribunals. *Bethlehem Steel Co.* case, *supra; International Union, UAW* v. *O'Brien*, 339 U.S. 454; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *Amal. Assn.* v. *Board, supra.* The decision of the Virginia appellate court and the reasoning thereof are not consonant with the rationale of the foregoing decisions of this Court.

The Virginia Supreme Court points to *Russell* v. *International Union, supra,* wherein the Alabama court upheld the State court's right to entertain an employee's action for damages against a labor union for conduct constituting "an unfair labor practice under the federal Act." The *Russell case* must be considered in the light of preference, as expressed in the opinion, "that the Supreme Court of the United States express its judgment on the question before committing the Supreme Court of Alabama to a profound change in law from what has been regarded as established law in Alabama." It is noteworthy that the

Alabama court "realize(s) that there is a difference between the action of a state in providing a judicial remedy for the redress of wrongs which fall under the exercise of the police powers of the state and of providing redress to persons for a civil tort as for instance violation of rights by unlawful picketing, for the recovery of damages to which they may be entitled" (31 LRRM 2572), although it concludes the Act "does not deprive the state of its judicial power."

The foregoing discussion sustains petitioners' contention of federal preemption in the instant case and the exclusion of the power, authority and jurisdiction of state courts and demonstrates that the Virginia appellate court erred in holding that petitioners' motion to dismiss "was properly overruled."

The erroneous construction placed upon the federal Act by the Virginia appellate court has resulted in that Court's erroneous affirmance of the trial court's judgment to the extent of $129,326.09, and interest and costs, as well as the imposition of costs in the state appellate court.

4. On June 15, 1953, this Court granted certiorari in *Garner* v. *Teamsters, etc. Union No. 776, AFL, supra,* wherein the Pennsylvania Supreme Court dismissed an injunction proceeding for lack of jurisdiction because an activity unlawful under state law also constituted an unfair labor practice under the Act, and heretofore certiorari was granted where an Alabama state court issued an injunction, at the instance of an employer, restraining labor unions from peaceful picketing. *Montgomery Bldg. & Construction Trades Council* v. *Ledbetter Erection Co., Inc.*, 343 U. S. 962 (dismissed because injunction was temporary, ... U. S. ...., 73 S. Ct. 196). The instant petition for review presents a related question of state court jurisdiction to entertain a common-law tort action of an employer against labor organizations awarding damages for acts which fall within the ambit of conduct interdicted

by Section 8(b)(1)(A) of the Act and for which a state court jury has found petitioners responsible—a verdict which the Virginia Supreme Court has approved upon petitioners' protest thereof. The precise question presented herein has not, but in the public interest, should be determined by this Court.

CONCLUSION

For the foregoing reasons, petitioners, and each of them, pray that this Petition for Writ of Certiorari should be granted, and that a writ of certiorari issue to review the decision and judgment of the Supreme Court of Appeals of Virginia entered as aforesaid on April 20, 1953.

Respectfully submitted,

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July 18, 1953

APPENDIX A

Constitution of the United States Article 1, Section 8:

The Congress shall have power * * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136 et seq.):

SEC. 1. *Short title: Congressional declaration of purpose and policy.*

(a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public

in connection with labor disputes affecting commerce. (61 Stat. 136; 29 USCA, Section 141).

Title I

Amendment of National Labor Relations Act

SEC. 101. The National Labor Relations Act is hereby amended as follows:

FINDINGS AND POLICIES

Section 1. * * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries. * * *

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of rep-

resentatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. * * * (61 Stat. 136; 29 USCA, Section 151).

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations * * *

* * * * * * * * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any famiy or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. (61 Stat. 137; 29 USCA, Section 152).

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid

or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3). (29 USCA, Section 157; 661 Stat. 140).

UNFAIR LABOR PRACTICES

SECTION 8.

* * * * * * * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * * (61 Stat. 140, USCA, Section 158(b))

SEC. 10. *Prevention of unfair labor practices—Powers of Board generally*

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: • • •

(c) The testimony taken by such member, agent, or agency of the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: • • •

• • • • • • • • • • •

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which applications may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of

the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have purisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside.* * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree

enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

• • • • • • • • • •

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 158 (b) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect

to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: • • •

(29 USCA, Sec. 160(a), (b), (c), (e), (f), (j), (l); 61 Stat 146; June 25, 1948, c. 648, Sec. 32, 62 Stat. 991, eff. Sept. 1, 1948.)

• • • • • • • • • • •

SEC. 14(b):

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law. (29 U.S.C.A., Sec. 164 (b), 61 Stat. 151 (b))

Title III

SEC. 301. *Suits by and against labor organizations—Venue, amount, and citizenship*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. (61 Stat. 156; 29 USCA, Sec. 185).

SEC. 303. *Boycotts and other unlawful combinations right to sue; jurisdiction; limitation; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their em-

ployment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom

such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit. (61 Stat. 158; 29 USCA, Sec. 187).

Title V

Definitions

SEC. 501. When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce. (61 Stat. 161; 29 USCA, Section 142).

* * * * * * * * * *